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APPLICANTS: A.C. Nicol et al.

SERIAL NO.: 10/022,663

GROUP ART UNIT: 3732

FILED: December 17, 2001 EXAMINER: Philogene, Pedro.

FOR: **Modular Prosthesis System with Novel Locking Mechanism**

ATTORNEY DOCKET NO.: 10557/263318

Commissioner for Patents
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Alexandria, VA 22313-1450

RECEIVED

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TECHNOLOGY CENTER R3700

DECLARATION OF ALEXANDER C. NICOL AND NICOLA K. FOWLER

Sir:

1. I, Alexander C. Nicol, and I, Nicola K. Fowler, am over the age of eighteen and am competent to make this declaration based on my personal knowledge of the facts stated herein. We understand that this Declaration will be presented to the United States Patent and Trademark Office in connection with the above-referenced application.

2. In 1998, Dr. Nicol was a senior lecturer at the University of Strathclyde in Glasgow, Scotland. From April 1997 through April 1998, Dr. Fowler was working for the University of Strathclyde as a research assistant through a design study contract with 3M Health Care Ltd. Dr. Fowler is now a senior research fellow at the University of Strathclyde.

Dr. Nicol is a professor at the University of Strathclyde and in August 2003 will become head of the Bioengineering Department at the University of Strathclyde.

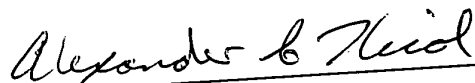
3. In April 1997, we began research on a design study for 3M Health Care Ltd. The purpose of the design study was to design and test new modular based humeral shoulder joint prosthesis designs with adjustability of the humeral head. This study was done under an industrial contract between the University of Strathclyde and 3M Health Care Ltd. and as such a Confidentiality Agreement was in place that governed the study. Under the Confidentiality Agreement, we were to keep the study confidential and only to disclose the progress and results of the study to appropriate persons at 3M Health Care Ltd. It was our understanding of the Confidentiality Agreement that 3M Health Care Ltd. was also to keep the study confidential.

4. We documented the results of our study in a final report entitled "Millennium Shoulder Project Final Report" and dated 3 April 1998 ("Final Report"). We treated the Final Report as falling under the Confidentiality Agreement and only disclosed the Final Report to our contacts at 3M Health Care Ltd. It is our understanding that 3M Health Care Ltd. also treated the Final Report as confidential. The Final Report was not and has not been published and was not any type of offer for sale. Rather, the final report provided 3M Health Care Ltd. with the confidential results and conclusions from the study. Our understanding is that the Final Report has been kept confidential by 3M Health Care Ltd. (and its successor) and is therefore not known to others outside those at 3M Health Care Ltd. (and its successor) with responsibility for the study.

5. Sometime in late 1998 or early 1999, Smith & Nephew, the assignee of the above-referenced patent application, came to own the division of 3M Health Care Ltd. with responsibility for this study. As a result, the rights to the invention described in the study came to be owned by Smith & Nephew.

We hereby declare that all statements made herein are of our own knowledge, are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statement may jeopardize the validity of the application or any patent issuing thereon.

Signed this 18th day of July 2003.



Alexander C. Nicol



Nicola K. Fowler